Supreme Court, U.S.
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No. 97-856

In The

Supreme Court of the United States

October Term, 1997

JUAN LUIS GARCIA, JR. and DARLENE GARCIA,

Petitioners,

vs.

CRISTOBAL REYES and CITY OF FORT LAUDERDALE,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

RESPONDENTS' BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

Table of Citations ii

Introduction 1

Reasons for Denying the Writ 2

I. This Case Is Inappropriate For Review Because Of The Unique Facts Involved That Distinguish This Case From Those With Which It Purportedly Conflicts. 2

A. Most Courts Have Rejected Claims For Permanent Deprivations, Finding That No Claim Is Available Where The Plaintiffs Were Not The Intended Focus Of The State's Action. 2

B. No Court Has Recognized A Claim Based On A Temporary Loss. 4

C. Petitioners Have No Claim Because Their Father, The Victim, Has No Claim Himself, And Their Claim Would Derive From His. 5

II. The Florida Supreme Court's Decision Focused On The Existence Of A Civil Rights Claim And Did Not Affect The Importance Of Family Relationships. 7

Conclusion 9

Contents

Page

TABLE OF CITATIONS

Cases Cited:

Bell v. City of Milwaukee, 746 F.2d 1205 (7th Cir. 1984) 4, 5

Broadnax v. Webb, 892 F. Supp. 188 (E.D. Mich. 1995) 3

Collins v. Harker Heights, 503 U.S. 115 (1992) 1

Coon v. Ledbetter, 780 F.2d 1158 (5th Cir. 1986) 3

Doe v. New York City Dept. of Soc. Serv., 649 F.2d 134 (2d Cir. 1981), *overruled*, 489 U.S. 189 (1989) ... 6

Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981), *cert. dismissed*, 456 U.S. 430 (1982) 1

Estate of Bailey by Oare v. County of York, 768 F.2d 503 (3d Cir. 1983), *overruled on other grounds, DeShaney v. Winnebago County Dep't of Soc. Serv.*, 489 U.S. 189 (1989) 4, 5

Evain v. Conlisk, 364 F. Supp. 1188 (N.D. Ill. 1973) 3

Garcia v. Reyes, 697 So. 2d 549 (Fla. 4th Dist. Ct. App. 1997) 1

Garcia v. Reyes, 698 So. 2d 257 (Fla. 1997) 4

Contents

	Page
Gunderson v. Schlueter, 904 F.2d 407 (8th Cir. 1990)	6
Harpole v. Arkansas Dep't of Human Serv., 820 F.2d 923 (8th Cir. 1987)	3, 4
Johnston v. Nat'l Broadcasting Co., 356 F. Supp. 904 (E.D.N.Y. 1973)	6
Jones v. Bombeck, 375 F.2d 737 (3d Cir. 1967)	6
Jones v. Hildebrandt, 550 P.2d 339 (Colo. 1976), *cert. dismissed*, 432 U.S. 183 (1977)	1
Lassiter v. Dep't of Social Serv., 452 U.S. 18 (1981)	8
Mattis v. Schnarr, 502 F.2d 588 (8th Cir. 1974)	4
May v. Anderson, 345 U.S. 528 (1953)	8
Meyer v. Nebraska, 262 U.S. 390 (1923)	7
Mullinax v. McElhenney, 672 F. Supp. 1449 (N.D. Ga. 1987)	6
Norton v. Cobb, 744 F. Supp. 798 (N.D. Ohio 1990)	3
Ortiz v. Burgos, 807 F.2d 6 (1st Cir. 1986)	3, 8, 9
Prince v. Massachusetts, 321 U.S. 158 (1944)	7

Contents

	Page
Reed v. Knox County Dept. of Human Serv., 968 F. Supp. 1212 (S.D. Ohio 1997)	3
Rutherford v. City of Berkeley, 780 F.2d 1444 (9th Cir. 1986)	5
Schieb v. Humane Soc. of Huron Valley, 582 F. Supp. 717 (E.D. Mich. 1984)	6
Shaw v. Stroud, 13 F.2d 791 (4th Cir. 1994)	3
Skinner v. Oklahoma, 316 U.S. 535 (1921)	7
Smith v. City of Fontana, 818 F.2d 1411 (9th Cir.), *cert. denied*, 484 U.S. 935 (1987)	4, 5
Stanley v. Illinois, 405 U.S. 645 (1972)	8
Trujillo v. Bd. of County Comm'rs of Santa Fe County, 768 F.2d 1186 (10th Cir. 1985)	3
United States v. Russell, 411 U.S. 423 (1973)	6
Vennes v. An Unknown Number of Unidentified Agents, 26 F.3d 1448 (8th Cir. 1994), *cert. denied*, __ U.S. __, 115 S. Ct. 721, 130 L. Ed. 2d 627 (1995)	6
Washington v. Glucksberg, __ U.S. __, __, 117 S. Ct. 2258 (1997)	1
White v. Talboys, 573 F. Supp. 49 (D. Colo. 1983)	3

Contents

	Page
Willard v. City of Myrtle Beach, S.C., 728 F. Supp. 397 (D.S.C. 1989)	3

Statute Cited:

42 U.S.C. § 1983 ..... 1, 2, 3, 4, 5, 6, 7

Rule Cited:

Supreme Court Rule 15 2

INTRODUCTION

To accept review, this Court would have to admit the possibility of a civil rights claim for loss of companionship although this Court has never done so, and *further*, that such a claim may be stretched beyond where even the minority of lower courts have gone — to a temporary, as opposed to a permanent, loss of companionship. Neither this Court, nor any other, has ever approached such a ruling.[1] Moreover, the Petitioners here, who were not themselves the target of the police conduct, seek to bring their claim although their father, the focus of the police conduct, has no claim under § 1983. *See Garcia v. Reyes*, 697 So. 2d 549 (Fla. 4th Dist. Ct. App. 1997).

This Court

> [has] always been reluctant to expand the concept of substantive due process because the guideposts for reasonable decisionmaking in this uncharted area are scarce and open-ended,

and knowing the great implications of any unrestrained expansion of substantive due process rights, this Court has recognized that it "must therefore 'exercise the utmost care whenever we are asked to break new ground in this field.' " *Washington v. Glucksberg*, __ U.S. __, __, 117 S. Ct. 2258, 2267-68 (1997) (quoting *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992)). Petitioners ask this Court not only to sail into uncharted waters, but to then blindly search for an

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1. In two cases presenting the issue, this Court dismissed certiorari as improvidently granted. *See Jones v. Hildebrandt*, 550 P.2d 339 (Colo. 1976), *cert. dismissed*, 432 U.S. 183 (1977); *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981), *cert. dismissed*, 456 U.S. 430 (1982).

unmapped island within them. If this Court is ever to recognize a civil rights claim for the loss of family companionship, this is not the appropriate case, as it involves only a temporary interruption of such right.[2] This Court should therefore deny the writ.

REASONS FOR DENYING THE WRIT

I.

THIS CASE IS INAPPROPRIATE FOR REVIEW BECAUSE OF THE UNIQUE FACTS INVOLVED THAT DISTINGUISH THIS CASE FROM THOSE WITH WHICH IT PURPORTEDLY CONFLICTS.

As argued below, this Court should deny the writ because (A) most circuit courts that have considered this issue have refused to recognize a civil rights claim for the loss of family companionship; (B) even those that have recognized such a claim have done so only in the context of permanent losses involving the death of a relative; and (C) a § 1983 claim on the part of relatives would derive from a claim on the part of the victim, and in this case the victim has no civil rights claim.

A. Most Courts Have Rejected Claims For Permanent Deprivations, Finding That No Claim Is Available Where The Plaintiffs Were Not The Intended Focus Of The State's Action.

Most federal circuit courts of appeal considering the issue have refused to recognize a claim for damages for loss of family

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2. In addition to the arguments below, pursuant to Rule 15 of this Court, Respondents note that any unconstitutionality in Juan Garcia's conviction, as Petitioners assert (Petition at 3), arises solely under the Florida Constitution.

companionship. *See Shaw v. Stroud*, 13 F.2d 791, 805 (4th Cir. 1994) (wife and minor children of individual shot and killed by state trooper); *Harpole v. Arkansas Dep't of Human Serv.*, 820 F.2d 923, 927-28 (8th Cir. 1987) (grandmother of child who died, allegedly due to state's negligence); *Ortiz v. Burgos*, 807 F.2d 6 (1st Cir. 1986) (stepfather and siblings of individual beaten by prison guards); *Coon v. Ledbetter*, 780 F.2d 1158, 1160-61 (5th Cir. 1986) (wife of man shot inside his trailer home by deputies). *See also Trujillo v. Bd. of County Comm'rs of Santa Fe County*, 768 F.2d 1186, 1190 (10th Cir. 1985) (to state a claim under § 1983, relatives must allege that the state *intended* to interfere with their rights to a particular family relationship).[3]

As one court noted,

> [p]rotecting familial relationships does not necessarily entail compensating relatives who suffer a loss as a result of wrongful state conduct, especially when the loss is an indirect result of that conduct.

Harpole, 820 F.2d at 928. In *Ortiz*, the court noted that recognizing a protected liberty interest in circumstances such as these "would constitutionalize adjudication in a myriad of situations we think inappropriate for due process scrutiny." 807 F.2d at 9. Courts realize that recognizing a cause of action in these circumstances would further expand the already hydra-like tentacles of § 1983. *See Broadnax v. Webb*, 892 F. Supp. 188, 190 (E.D. Mich. 1995).

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3. Several district courts also have refused to recognize such a claim. *See Reed v. Knox County Dept. of Human Serv.*, 968 F. Supp. 1212 (S.D. Ohio 1997); *Broadnax v. Webb*, 892 F. Supp. 188 (E.D. Mich. 1995); *Norton v. Cobb*, 744 F. Supp. 798 (N.D. Ohio 1990); *Willard v. City of Myrtle Beach, S.C.*, 728 F. Supp. 397 (D.S.C. 1989); *White v. Talboys*, 573 F. Supp. 49 (D. Colo. 1983); *Evain v. Conlisk*, 364 F. Supp. 1188 (N.D. Ill. 1973).

Only three Circuits (the Ninth, the Seventh, and the Third) have recognized a claim for damages for loss of family companionship. *See Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir.), *cert. denied*, 484 U.S. 935 (1987); *Estate of Bailey by Oare v. County of York*, 768 F.2d 503 (3d Cir. 1983), *overruled on other grounds*, *DeShaney v. Winnebago County Dep't of Soc. Serv.*, 489 U.S. 189 (1989); *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984).

In *Mattis v. Schnarr*, 502 F.2d 588 (8th Cir. 1974), another case Petitioners cite (Petition at 8), the court did not hold that a family member could sue for damages under § 1983, but that a father could sue for a *declaratory judgment* to determine the constitutionality of a police shooting of his son. *Id.* at 592-93. The court specifically noted that damages were not available. *Id.* at 595. Later, in *Harpole*, 820 F.2d at 927-28, the Eighth Circuit refused to recognize a right to damages under § 1983.

B. No Court Has Recognized A Claim Based On A Temporary Loss.

The conflict among the lower courts is limited to whether a civil rights claim exists for *permanent* loss of family companionship. As the Florida Supreme Court correctly noted in this case, no court has recognized the claim these Petitioners assert, for a *temporary* loss of companionship. *See Garcia v. Reyes*, 698 So. 2d 257, 260 (Fla. 1997).

Each of the three cases that have recognized a civil rights claim for loss of family companionship involved the death of a family member. In both *Smith*, 818 F.2d at 1411, and *Bell*, 746 F.2d at 1205, police officers shot and killed someone, and relatives sued under section 1983. In *Bell*, the court emphasized that —

> this deprivation was far more substantial than the unlawful removal of a child from the parent's custody; it was the *annihilation* of the parent-child relationship.

Bell, 746 F.2d at 1245 (emphasis added). In *Bailey*, 768 F.2d at 503, a child died at the hands of his mother's boyfriend. The court followed *Bell* in holding

> that a parent *whose child has died* as a result of unlawful state action may maintain an action under § 1983 for the deprivation of liberty.

Id. at 509 n.7 (emphasis added).

These decisions involved death, and their language implies that their holdings were limited to cases of death. No case supports an extension of these holdings to temporary deprivations of the right to family companionship.

C. Petitioners Have No Claim Because Their Father, The Victim, Has No Claim Himself, And Their Claim Would Derive From His.

Finally, another fundamental difference exists between this case and those with which it purportedly conflicts. In each case recognizing a § 1983 claim for the loss of family companionship, the victim (through the estate) also had a § 1983 claim. For example, in *Smith*, 818 F.2d at 1411, and *Bell*, 746 F.2d at 1205, police officers deliberately shot and killed the relative. The victim's estate asserted a § 1983 claim. *See Rutherford v. City of Berkeley*, 780 F.2d 1444, 1447 (9th Cir. 1986) (allegation of unprovoked assault and battery by police officers states a claim for violation of substantive due process). In *Bailey*, 768 F.2d at 508, the complaint alleged that

the state was deliberately indifferent to the decedent child's welfare, resulting in the child's death from child abuse. Again, the victim's estate asserted a § 1983 claim. *See Doe v. New York City Dept. of Soc. Serv.*, 649 F.2d 134, 145 (2d Cir. 1981) (state may be held liable if the agency exhibited deliberate indifference to a known injury, a known risk, or a specific duty), *overruled*, 489 U.S. 189 (1989).

In this case, on the other hand, the father — who was allegedly deprived of his liberty due to entrapment — has no § 1983 claim. Entrapment does not violate federal due process rights. The focus of the entrapment defense, at least under federal law, is on the "predisposition" of the defendant to commit the crime. *See United States v. Russell*, 411 U.S. 423, 429 (1973). The entrapment defense is not constitutionally based and does not raise federal due process concerns. *See id.* at 431-32. Federal courts have unanimously rejected a civil rights claim arising from entrapment. *See Vennes v. An Unknown Number of Unidentified Agents*, 26 F.3d 1448, 1451-52 (8th Cir. 1994), *cert. denied*, __ U.S. __, 115 S. Ct. 721, 130 L. Ed. 2d 627 (1995); *Gunderson v. Schlueter*, 904 F.2d 407 (8th Cir. 1990); *Jones v. Bombeck*, 375 F.2d 737, 738 (3d Cir. 1967); *Mullinax v. McElhenney*, 672 F. Supp. 1449, 1451 (N.D. Ga. 1987); *Schieb v. Humane Soc. of Huron Valley*, 582 F. Supp. 717, 725 (E.D. Mich. 1984); *Johnston v. Nat'l Broadcasting Co.*, 356 F. Supp. 904 (E.D.N.Y. 1973). Therefore, the victim's children have no claim, either.

In sum, to recognize the claim Petitioners assert, this Court would have to make a triple jump beyond this Court's previous holdings. First, it must recognize a § 1983 claim for the deprivation of family companionship, which only a minority of circuit courts have done. Second, it must recognize such a claim in the case of a mere *temporary* deprivation, which *no* court has done. Third, it must recognize such a claim in the unusual case where the victim himself has no § 1983 claim.

II.

THE FLORIDA SUPREME COURT'S DECISION FOCUSED ON THE EXISTENCE OF A CIVIL RIGHTS CLAIM AND DID NOT AFFECT THE IMPORTANCE OF FAMILY RELATIONSHIPS.

The Florida Supreme Court's decision did not conflict with any decisions of this Court recognizing the importance of family relationships, as Petitioners assert (Petition at 10-11). The cases Petitioners cite all concern the liberty interest in family relationships in the context of substantive and procedural due process (*see* Petition at 10-11). The protection of family relationships from certain forms of interference, however, does not create a § 1983 claim for damages, and Petitioners cite no case from this Court recognizing such a claim in this context.

In the substantive due process cases, this Court has limited the government's intrusion into certain private family decisions. *See, e.g., Prince v. Massachusetts*, 321 U.S. 158 (1944) (parents have right to bring up a child according to their religious beliefs); *Skinner v. Oklahoma*, 316 U.S. 535 (1921) (fundamental rights of marriage and procreation require the application of strict scrutiny to a law providing for sterilization of certain classes of criminals); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (state law requiring teaching only in English deprived teachers and parents of liberty).

None of these cases were suits for damages. As one court has noted,

> [t]hese substantive due process cases do not hold that family relationships are, in the abstract, protected against all state encroachments, direct or indirect, but only that the state may not interfere with an

> individual's right to choose how to conduct his or her family affairs.

Ortiz, 807 F.2d at 8. This case does not involve the regulation of the family relationship. Therefore, this Court's substantive due process cases do not support Petitioners' assertion that the Florida Supreme Court's decision evidences "substantial disarray" on the issue of the protection of family relationships (*see* Petition at 11).

In the procedural due process cases, the Court has required procedural safeguards before the state may deliberately infringe on the parent-child relationship. *See, e.g, Lassiter v. Dep't of Social Serv.*, 452 U.S. 18 (1981) (despite the "unique kind of deprivation" effected when parental rights are terminated, no constitutional violation found in the failure to appoint counsel for the parent); *Stanley v. Illinois*, 405 U.S. 645 (1972) (unwed father's right to a hearing to determine whether he is a fit parent before the state may terminate custody); *May v. Anderson*, 345 U.S. 528 (1953) (custody decree of one state may not be enforced against a parent over whom the issuing state had no personal jurisdiction).

Again, these cases do not involve suits for damages. Courts have interpreted them simply as protecting individuals from direct, intentional government intervention into the parent-child relationship:

> [W]e think it significant that the Supreme Court has protected the parent only when the government directly acts to sever or otherwise affect his or her legal relationship with the child. The Court has never held that governmental action that affects the parental relationship only incidentally . . . is susceptible to challenge for a violation of due process.

Ortiz, 807 F.2d at 8-9. The Petitioners here do not assert a procedural due process claim. Therefore, the Florida Supreme Court's decision is irrelevant to these cases.

CONCLUSION

For the reasons stated, this Court should deny certiorari.

Respectfully submitted,

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